

M96VDOOP

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 603 (VEC)

5 KEYON DOOLING,

6 Defendant.

Plea

7 -----x

8 New York, N.Y.  
9 September 6, 2022  
12:10 p.m.

10 Before:

11 HON. ONA T. WANG,

12 Magistrate Judge

13  
14 APPEARANCES

15 DAMIAN WILLIAMS,

16 United States Attorney for the  
Southern District of New York

17 RYAN B. FINKEL

Assistant United States Attorney

18 DONALD J. YANNELLA, III

19 Attorney for Defendant

20  
21 Also Present: Lisa Vega, FBI

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(Case called)

THE DEPUTY CLERK: Please state your appearances for the record.

MR. FINKEL: Good afternoon, your Honor.

Ryan Finkel for the government. I'm joined today at counsel table by Special Agent Lisa Vega from the FBI.

THE COURT: Good afternoon.

MR. YANNELLA: For Mr. Dooling, Donald Yannella.  
Good afternoon.

THE COURT: Good afternoon.

All right. I understand that we're going to arraign Mr. Dooling on the superseding indictment and then go to a change of plea; is that right?

MR. YANNELLA: Yes, your Honor.

THE COURT: Okay. Let's do the arraignment first.

All right. Mr. Dooling, are you able to speak and understand English?

THE DEFENDANT: Yes. Yes, your Honor.

THE COURT: Okay. And I have before me a superseding indictment in this case. And the charges are -- Count One is conspiracy to commit healthcare fraud and wire fraud --

MR. YANNELLA: It's all the way back on page 34, your Honor.

THE COURT: Thank you.

MR. YANNELLA: I did the same thing.

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1 THE COURT: Okay. Sorry, I just noted -- was told  
2 that we needed to do the arraignment first. All right.

3 And Count Two is conspiracy to make false statements  
4 relating to healthcare matters. And is it just those two  
5 counts?

6 MR. FINKEL: Yes, your Honor.

7 THE COURT: All right.

8 Counsel, have you seen this indictment?

9 MR. YANNELLA: Yes, I have, your Honor.

10 THE COURT: And have you reviewed it with your client?

11 MR. YANNELLA: Yes.

12 THE COURT: And do you waive its public reading?

13 MR. YANNELLA: Yes.

14 THE COURT: And how does the defendant wish to plead  
15 at this time?

16 MR. YANNELLA: He wishes to enter a not-guilty plea.

17 THE COURT: All right. Thank you.

18 Has there already been -- I am assuming with docket  
19 entry 497 that there already has been a 5(f) order entered in  
20 this case?

21 MR. FINKEL: Yes, your Honor.

22 THE COURT: Okay.

23 All right. Now let's proceed to the plea allocution.

24 I have before me a consent to proceed before a United  
25 States Magistrate Judge on a felony plea allocution that you

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1 have signed, Mr. Dooling. What this form says is that knowing  
2 that you have the right to have this plea taken by a United  
3 States District Judge, you are agreeing to have the plea taken  
4 by a United States Magistrate Judge instead.

5 As a magistrate judge, I have the authority to take  
6 your plea with your consent, and you will still be entitled to  
7 all of the same rights and protections as if you were before a  
8 district judge. Among other things, if you are found guilty,  
9 you will be sentenced by a district judge.

10 Did you sign this consent to proceed before a United  
11 States Magistrate Judge voluntarily?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And before you signed the form, did your  
14 lawyer explain it to you?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And do you wish to proceed with your plea  
17 before a United States Magistrate Judge?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. Your consent is accepted.

20 The purpose of this proceeding is to make sure that  
21 you understand your rights, to decide whether you're pleading  
22 guilty of your own free will, and to make sure you're pleading  
23 guilty because you are guilty and not for some other reason.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: If at any time you don't understand any of  
2 my questions or if you want to consult with your attorney, just  
3 say so; because it is important that you understand every  
4 question before you answer.

5 Before I take your plea, I must ask you a series of  
6 questions and I, therefore, need to place you under oath.

7 (Defendant sworn)

8 THE COURT: All right. Mr. Dooling, do you understand  
9 that any statements you make here today under oath may be used  
10 against you in a prosecution for perjury or for making false  
11 statements if you do not tell the truth?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Talk normally into the microphone.

14 THE DEFENDANT: Okay.

15 THE COURT: You don't need to lean super in.

16 THE DEFENDANT: Sounds good.

17 THE COURT: All right. Please tell me your full name.

18 THE DEFENDANT: Keyon Latoy Dooling.

19 THE COURT: All right. And how old are you?

20 THE DEFENDANT: 42 years old.

21 THE COURT: Did you say 42?

22 THE DEFENDANT: 42 years old.

23 THE COURT: And are you a citizen of the United  
24 States?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And are you able to read and write in  
2 English?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And how far did you go in school?

5 THE DEFENDANT: Two years of college.

6 THE COURT: Two years of college. Okay.

7 Are you recently -- are you now or have you recently  
8 been under the care of a doctor or psychiatrist for any reason?

9 THE DEFENDANT: I'm currently in therapy.

10 THE COURT: Sorry?

11 THE DEFENDANT: I'm currently seeing a therapist.

12 THE COURT: Okay. All right.

13 Does the condition for which you are treated and for  
14 which you're seeing the therapist, does that have any impact on  
15 your ability to see or hear or think or reason or understand or  
16 make decisions or judgments?

17 THE DEFENDANT: No.

18 THE COURT: Have you been treated recently for any  
19 mental illness or addiction to narcotic drugs of any kind?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: As you sit here today, are you under the  
22 influence of any mind-altering drug or any alcoholic drink?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Are you on any medication?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Have you been able to understand  
2 everything that I've said to you so far?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you feel all right today?

5 THE DEFENDANT: I feel great.

6 THE COURT: All right.

7 Have you seen a copy of the indictment in this case?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And have you read it?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And do you understand what it says that  
12 you did?

13 THE DEFENDANT: I do.

14 THE COURT: And have you had a chance to discuss the  
15 charges and how you wish to plead with your attorney?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Are you satisfied with your attorney's  
18 representation of you?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And have you had a full opportunity to  
21 discuss this case with him?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And has he told you the consequence of  
24 pleading guilty?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And are you ready to enter a plea?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Count One of the indictment, of the  
4 superseding indictment, charges you with conspiracy to commit  
5 healthcare fraud and wire fraud. And under the plea agreement,  
6 which I will get to shortly, will contemplate that you will  
7 plead to conspiracy to commit the single object of healthcare  
8 fraud.

9 Count One, as modified by the plea agreement, charges  
10 you -- again would be charging you with conspiracy to commit  
11 the single object of healthcare fraud, in violation of 18,  
12 United States Code, 1349. Count One carries a maximum sentence  
13 of ten years' imprisonment; a maximum term of three years'  
14 supervised release; and a maximum fine of as much as \$250,000,  
15 or twice what was made by the criminal activity, or twice what  
16 someone other than yourself lost because of the criminal  
17 activity; and a mandatory \$100 special assessment. In  
18 addition, the Court must order you to pay restitution to any  
19 victims.

20 Do you understand these maximum penalties that I have  
21 just described to you?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Okay. I'll also note that the plea  
24 agreement indicates that you agree to forfeit to the United  
25 States a sum of -- the sum of \$449,250.50 in United States



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1 currency. And you agree to make -- and that there is a consent  
2 order of forfeiture which I have seen; and that you also agree  
3 to make restitution in the amount of \$547,495 to the National  
4 Basketball Association Players Health and Welfare Benefit Plan.  
5 And the obligation to make such restitution shall be made a  
6 condition of probation or supervised release.

7 Do you also understand that if, as part of your  
8 sentence, you are placed on a term of supervised release and  
9 you then violated any of the conditions of that release, you  
10 could face an additional term of imprisonment?

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: That means that the district judge can  
14 revoke the term of release previously imposed and return you to  
15 prison without giving you any credit for time previously served  
16 on post-release supervision.

17 You told me earlier that you're a citizen of the  
18 United States. By law, I still must tell you that if, in fact,  
19 you are not a United States citizen, a guilty plea means that  
20 you may be removed from the United States and denied admission  
21 to the United States or denied citizenship in the future.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. I'm now going to explain  
25 certain constitutional rights that you have. These are rights

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1 that you will be giving up if you enter a guilty plea. Please  
2 listen carefully to what I'm about to say. And if you do not  
3 understand something, stop me, and your attorney and I will  
4 explain the issue more fully.

5 Do you understand that you have a right to plead not  
6 guilty or, having already pleaded not guilty, to persist in  
7 that plea, and that you would have a right to a speedy and  
8 public jury trial, if you wish?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And do you understand that if you plead  
11 not guilty and go to trial, you would be presumed innocent and  
12 the burden would be on the government to prove your guilt  
13 beyond a reasonable doubt?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: That means that you would not have to  
16 prove you were innocent, and you could not be convicted unless  
17 a jury of 12 people unanimously agreed that you are guilty  
18 beyond a reasonable doubt.

19 Do you understand that you would be entitled to be  
20 represented by an attorney at all stages – at trial and at  
21 every other stage of the proceedings – and if you could not  
22 afford to hire one, the Court would provide an attorney to you  
23 for free?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that at such a trial,

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1 you would be entitled to confront and cross-examine any  
2 witnesses called by the government to testify against you; that  
3 you would be entitled to testify on your own behalf; that you  
4 could call witnesses and present evidence; and that the Court  
5 would issue subpoenas at your request to compel witnesses to  
6 appear and testify in your defense, even if they didn't want to  
7 come?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you understand that at a trial, you  
10 would not be required to testify against yourself? And if you  
11 chose not to testify, that could not be used against you.

12 Do you understand that if you were convicted at a  
13 trial, you have a right to appeal that verdict to a higher  
14 court?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that if you enter a  
17 guilty plea, you give up all of these rights, including your  
18 right to a trial; that you will not be able to withdraw your  
19 plea; and the only remaining step in this case will be the  
20 sentencing?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And do you understand that the decision as  
23 to the appropriate sentence in your case will be entirely up to  
24 the sentencing judge, and that she will be limited only by what  
25 the law requires?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that even if you are  
3 surprised or disappointed by your sentence, you will still be  
4 bound by your guilty plea?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And finally, if you do plead guilty, you  
7 are also giving up the right not to incriminate yourself, and I  
8 will ask you questions about what you did in order to satisfy  
9 myself that you are actually guilty. By pleading guilty, you  
10 will be admitting your factual, as well as legal, guilt.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Knowing all of this, do you still wish to  
14 plead guilty to -- I guess I'm going to call it the  
15 lesser-included charge in Count One of the indictment.

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And have any force or threats been used,  
18 either direct or indirect, to influence how you plead today?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Okay.

21 I have a question for the government.

22 I had been provided, I think, an earlier version of  
23 the plea agreement that's dated August 15th. And I see that  
24 the original is dated August 31st. Is there anything that has  
25 changed between the August 15th and August 31st versions?

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1 MR. FINKEL: Your Honor, the only thing that's changed  
2 is that the August 31st plea agreement references the S7  
3 superseding indictment. The agreement you have referenced the  
4 S3 superseding indictment. Substantively, aside from that, the  
5 plea agreements are the same.

6 THE COURT: Okay. And I do note that I have the S7  
7 superseding indictment before me, and that was what Mr. --  
8 what I used to arraign Mr. Dooling.

9 MR. FINKEL: Yes, your Honor.

10 The S7 indictment was returned on August 31st and  
11 supplanted the S3. So the plea agreement was reissued with the  
12 same terms, just updated to notice the S7 indictment.

13 THE COURT: Okay. Great. Thank you very much.

14 All right. I have before me a letter dated August  
15 31st from the U.S. Attorney to your attorney containing a plea  
16 agreement. Have you read this letter?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And did you sign it on the last page?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Before you signed it, did you discuss it  
21 with your attorney?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And did he explain to you all of its terms  
24 and conditions?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And apart from what is contained in this  
2 letter, have any promises been made to you in order to get you  
3 to plead guilty?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: All right.

6 In reviewing the plea agreement, I note that it  
7 contains an analysis of how part of our law of sentencing known  
8 as the sentencing guidelines may impact on any prison term in  
9 your case. Based on that analysis, the agreement states that  
10 the guideline sentencing range can be expected to be from 33 to  
11 41 months. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And do you understand that the sentencing  
14 judge is not bound by the calculation in the letter; and that  
15 they will be free to do their own calculation, which may result  
16 in a guideline range that is different from the one in the  
17 letter?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And do you understand that no matter what  
20 sentencing range the sentencing judge believes is called for by  
21 the guidelines, that range is just one of many factors that the  
22 judge will consider in determining your sentence; and that the  
23 judge has discretion to give you a prison sentence below or  
24 above that range --

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: -- anywhere up to the maximum sentence of  
2 ten years. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And do you also understand that under the  
5 terms of this plea agreement, if the judge sentences you to a  
6 prison term that is 41 months or less, you are giving up your  
7 right to appeal that sentence or to challenge it in any other  
8 way, such as through a writ of *habeas corpus*?

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Also, do you understand that the plea  
12 agreement says that you cannot appeal any fine less than  
13 \$150,000 -- any fine of \$150,000 or less; and that you agree  
14 not to appeal any forfeiture amount that is less than  
15 \$449,250.50; and that you also agree not to appeal any  
16 restitution amount that is less than or equal to \$547,495; and  
17 that you cannot appeal any lawful sentence of supervised  
18 release? Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you also understand that in this  
21 letter, you're giving up your right to complain if the  
22 government withheld evidence from your attorney that would have  
23 been helpful to you?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: All right.

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1           Is your plea voluntary, that is, made of your own free  
2 will?

3           THE DEFENDANT: Yes, your Honor.

4           THE COURT: Have any threats been made to influence  
5 how you plead today?

6           THE DEFENDANT: No, your Honor.

7           THE COURT: And did you, in fact, commit the offense  
8 that is charged in Count One of the indictment?

9           THE DEFENDANT: Yes, your Honor.

10          THE COURT: Okay. Before I ask you to tell me what  
11 you did, I will ask the government to summarize the elements of  
12 the offense and, if they wish, to tell me what evidence they  
13 would have offered at trial.

14          MR. FINKEL: Your Honor, the elements of the  
15 lesser-included offense in Count One are that the government  
16 would need to prove beyond a reasonable doubt:

17               First, that two or more persons in some way or manner  
18 agreed to try to accomplish a common and unlawful plan, here,  
19 to commit healthcare fraud as charged in the indictment.

20               And second, the defendant knew the unlawful purpose of  
21 the plan, and willfully enjoyed it -- excuse me, willfully  
22 joined it.

23               The elements of healthcare fraud, the substantive  
24 crime, are:

25               First, the defendant executed or attempted to execute



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1 a scheme or artifice to defraud a healthcare benefit program by  
2 means of false or fraudulent pretenses, representations, or  
3 promises.

4 Second, the defendant -- excuse me. Second, the false  
5 or fraudulent pretenses, representations, or promises related  
6 to a material fact.

7 Third, the defendant acted willfully and intended to  
8 defraud.

9 And fourth, the defendant did so in connection with  
10 the delivery of or payment for healthcare benefits, items, or  
11 services.

12 In addition, the government would need to prove venue  
13 by a preponderance of the evidence.

14 THE COURT: Did you want to tell me about any evidence  
15 that the government would have offered at trial?

16 MR. FINKEL: Sure. Sorry, your Honor.

17 If this were to proceed to trial, the government would  
18 offer, among other things, documents submitted to the NBA's  
19 healthcare reimbursement plan, testimony from witnesses, email  
20 search warrant returns, and evidence establishing that certain  
21 invoices submitted to the plan were fraudulent.

22 THE COURT: All right.

23 Mr. Dooling, please tell me in your own words what  
24 makes you guilty of the charge against you.

25 THE DEFENDANT: Between 2017 and 2020, I agreed with

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1 others to commit healthcare fraud, including in the Southern  
2 District of New York. I agreed to receive financial kickback  
3 payments from medical professionals in exchange for allowing  
4 them to bill the NBA Health and Welfare Benefits for services  
5 that I knew had not been rendered.

6 I knew it was illegal for me -- excuse me. I knew it  
7 was illegal for the medical professionals to bill for services  
8 not rendered, and I knew my actions were illegal.

9 THE COURT: And Mr. Dooling, I noticed that you were  
10 reading from a statement, and that's entirely appropriate. I'm  
11 sure you and your attorney wanted to make sure that the  
12 statements were exact and correct. I want to ask you one more  
13 time, did you do those things that you just told me about?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Does the government represent that it has  
16 sufficient evidence to establish defendant's guilt beyond a  
17 reasonable doubt?

18 MR. FINKEL: Yes, your Honor.

19 THE COURT: And Mr. Yannella, do you know of any  
20 reason why your client should not be permitted to plead guilty?

21 MR. YANNELLA: No, your Honor.

22 THE COURT: And do you have any doubt as to the  
23 defendant's competence to plead at this time?

24 MR. YANNELLA: No your Honor.

25 THE COURT: And how is venue in the Southern District

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1 of New York satisfied in this case?

2 MR. FINKEL: One of the co-conspirators of this scheme  
3 submitted and caused to be submitted fraudulent claims to the  
4 plan from the Southern District of New York.

5 THE COURT: Okay. Any objection to that,  
6 Mr. Yannella?

7 MR. YANNELLA: No. I've discussed it with my client  
8 and we have no objection.

9 THE COURT: All right.

10 And finally, again, Mr. Dooling, you knew -- did you  
11 know that what you were doing was against the law?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right.

14 Are there any further questions either side wants me  
15 to ask at this time?

16 MR. FINKEL: No, your Honor. Thank you.

17 MR. YANNELLA: No, your Honor.

18 THE COURT: All right. On the basis of Mr. Dooling's  
19 responses to my questions and my observations of his demeanor,  
20 I find that he is fully competent to enter an informed plea at  
21 this time. I also conclude that he understands the nature of  
22 the charge and the consequences of his plea. And finally, I am  
23 satisfied that his plea is voluntary and that there is a  
24 factual basis for it.

25 Accordingly, I recommend that the proffered plea to

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1 the lesser-included charge in Count One of the indictment be  
2 accepted.

3 I assume the government will order a copy of the  
4 transcript and will submit it to Judge Caproni, together with  
5 any additional paperwork so that she may act on my  
6 recommendation. A presentence investigation report is ordered.

7 Should I set a sentencing date, or has one already  
8 been set?

9 MR. FINKEL: Your Honor, the government asks you set a  
10 control date.

11 THE COURT: Okay. All right.

12 We'll set a control date for 90 days out, which is  
13 December 5th.

14 All right. The prosecution case summary for purposes  
15 of the presentence report is to be delivered to the probation  
16 department no later than 14 days from today. Defense counsel,  
17 please make yourself available to be interviewed by the  
18 probation department with your client no later than 14 days  
19 from today.

20 Is there anything else on this matter from either  
21 side?

22 MR. FINKEL: Yes, your Honor. I just ask that the  
23 defendant -- that the Court inquire whether the defendant  
24 admits to the forfeiture allegation in the indictment pursuant  
25 to the plea agreement, and just formally that the defendant

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1 state that he is pleading guilty.

2 THE COURT: Okay. I thought I did that.

3 MR. FINKEL: If you did, I apologize.

4 THE COURT: No, that's okay.

5 We can always do it again.

6 All right. So I wanted to confirm with you,  
7 Mr. Dooling, that you admit the forfeiture allegation in the  
8 plea agreement?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And he's already signed a consent order of  
11 forfeiture, right?

12 MR. FINKEL: Yes.

13 THE COURT: Okay. All right. Yes, I see  
14 Mr. Dooling's signature on it.

15 And then are you pleading guilty now and your intent  
16 is to plead guilty now?

17 THE DEFENDANT: Yes.

18 THE COURT: And you're pleading guilty because you are  
19 guilty and not for some other reason?

20 THE DEFENDANT: I am pleading guilty because I assume  
21 full responsibility for my actions.

22 THE COURT: Thank you very much.

23 MR. FINKEL: Thank you, your Honor.

24 THE COURT: All right. Thank you very much.

25 We are adjourned. (Adjourned)